

Conference Engrossed

State of Arizona  
Senate  
Forty-sixth Legislature  
First Regular Session  
2003

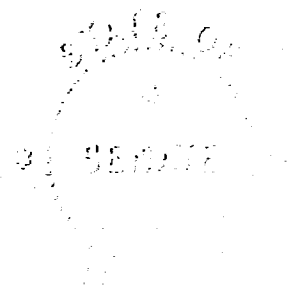
CHAPTER 237

# SENATE BILL 1119

AN ACT

AMENDING SECTIONS 44-1271, 44-1273 AND 44-1276, ARIZONA REVISED STATUTES;  
AMENDING TITLE 44, CHAPTER 9, ARTICLE 6, ARIZONA REVISED STATUTES, BY ADDING  
SECTION 44-1282; RELATING TO TELEPHONE SOLICITATIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)



1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 44-1271, Arizona Revised Statutes, is amended to  
3 read:

4 44-1271. Definitions

5 In this article, unless the context otherwise requires:

6 1. "Consumer" means a person who is solicited by a seller or  
7 solicitor.

8 2. "Licensed associated person of a securities, commodities or  
9 investments broker" means any associated person registered or licensed by the  
10 national association of securities dealers, a self-regulatory organization  
11 as defined in the securities exchange act of 1934 (15 United States Code  
12 sections ~~78a through 78f~~ SECTION 78c) or an official or agency of this state  
13 or of any other state of the United States.

14 3. "Licensed securities commodities or investments broker, dealer or  
15 investment advisor" means a person licensed or registered as a  
16 securities commodities or investments broker, dealer or investment  
17 advisor by the securities and exchange commission, the national  
18 association of securities dealers, a self-regulatory organization as  
19 defined in the securities exchange act of 1934 (15 United States Code  
20 sections ~~78a through 78f~~ SECTION 78c) or an official or agency of this  
21 state or of any other state of the United States.

22 4. "Manager" means a person who supervises the work of a solicitor.

23 5. "Merchandise" means objects, wares, goods, commodities,  
24 intangibles, real estate, securities or services.

25 6. "Person" means:

26 (a) A natural person or his THE PERSON'S legal representative.

27 (b) A partnership, a limited liability company, a limited liability  
28 partnership or a domestic or foreign corporation.

29 (c) A company, trust, business entity or association.

30 (d) An agent, employee, salesman, partner, officer, director, member,  
31 stockholder, associate or trustee.

32 (e) Any other legal entity or any group associated in fact although  
33 not a legal entity.

34 7. "Premium" means any gift, bonus, prize, award or other incentive  
35 or inducement to purchase merchandise.

36 8. "Principal" means an owner or an officer of a corporation or  
37 limited liability company, a general partner of a partnership, a sole  
38 proprietor of a sole proprietorship, a partner of a limited liability  
39 partnership, a trustee of a trust and any other individual who controls,  
40 manages or supervises a telephone sales operation.

41 9. "Prize" means anything offered or purportedly offered and given or  
42 purportedly given to a person by chance. Chance exists if a person is  
43 guaranteed to receive an item and at the time of the offer or purported offer  
44 the seller or solicitor does not identify the specific item that the person  
45 will receive.

1       10. "Prize promotion" means a sweepstakes or other game of chance or  
2 an oral or written express or implied representation that a person has won,  
3 has been selected to receive or may be eligible to receive a prize or  
4 purported prize.

5       11. "Recovery service" means any business or other practice in which  
6 a person represents or implies that the person will recover or assist in  
7 recovering for a fee any amount of money that a consumer has provided to a  
8 seller pursuant to a telephone solicitation.

9       12. "Seller" means a person who, directly or through a solicitor, does  
10 any of the following:

11       (a) Initiates telephone calls to provide or arrange to provide goods  
12 or ~~services~~ MERCHANDISE to consumers in exchange for payment.

13       (b) Solicits by telephone in response to inquiries from a consumer  
14 generated by a notification or communication sent or delivered to the  
15 consumer that represents or implies that:

16       (i) The consumer has been specially selected in any manner to receive  
17 the notification or communication or the offer contained in the notification  
18 or communication.

19       (ii) The consumer will receive a premium if the consumer calls the  
20 person.

21       (iii) If the consumer purchases merchandise from the person, the  
22 consumer will also receive additional or other merchandise, the same as or  
23 different from the type of merchandise purchased, without any additional  
24 charge or for a price that the person represents or implies is less than the  
25 regular price of the merchandise.

26       (iv) The person is offering for sale the services of a recovery  
27 service.

28       (v) The person is offering to make a loan, to arrange or assist in  
29 arranging a loan or to assist in providing information that may lead to  
30 obtaining a loan unless no payment of any kind is made until the loan  
31 proceeds are disbursed to the borrower.

32       (vi) The consumer will receive a credit card if the consumer pays a  
33 fee for the card before receiving the card.

34       (c) Solicits by telephone in response to inquiries generated by  
35 advertisements on behalf of the person that represent or imply that:

36       (i) The person is offering to sell the services of a recovery service.

37       (ii) The person is offering to make a loan, to arrange or assist in  
38 arranging a loan or to assist in providing information that may lead to  
39 obtaining a loan unless no payment of any kind is made until the loan  
40 proceeds are disbursed to the borrower.

41       (iii) The consumer will receive a credit card if the consumer pays a  
42 fee for the card before receiving the card.

1       13. "Solicitor" means a person, other than a seller or employee of a  
2 seller, who uses a telephone to seek sales OR RENTALS of merchandise on  
3 behalf of a seller or uses a telephone to verify sales OR RENTALS for a  
4 seller.

5       14. "SUBSCRIBER" MEANS A PERSON WHO SUBSCRIBES TO RESIDENTIAL TELEPHONE  
6 SERVICE FROM A LOCAL EXCHANGE COMPANY AND ANY PERSON WHO LIVES OR SUBSCRIBES  
7 WITH THAT PERSON.

8       15. "TELEPHONE SOLICITATION" MEANS ANY VOICE COMMUNICATION TO A  
9 TELEPHONE NUMBER IN THIS STATE FROM A LIVE OPERATOR, ANNOUNCING DEVICE OR  
10 OTHERWISE TO OFFER MERCHANDISE FOR SALE OR RENT.

11       Sec. 2. Section 44-1273, Arizona Revised Statutes, is amended to read:

12       44-1273. Limited exemptions

13       A. The following sellers are not required to register and, except for  
14 section 44-1278, subsection B AND SECTION 44-1282, are exempt from this  
15 article:

16       1. A person acting within the scope of a license issued under  
17 title 20.

18       2. A person who is registered with the secretary of state pursuant to  
19 section 44-6552 or who is exempt from registration pursuant to section  
20 44-6553.

21       3. A person making telephone solicitations without the intent to  
22 complete and who does not complete the sales presentation during the  
23 telephone solicitation but completes the sales presentation at a later  
24 face-to-face meeting between the solicitor and the consumer provided that the  
25 later face-to-face meeting is not for the purpose of collecting the payment  
26 or delivering any item purchased.

27       4. A person who after making a telephone contact with a consumer sends  
28 the consumer descriptive literature and does not require payment before the  
29 consumer's review of the descriptive literature and the person is not  
30 conducting a solicitation involving any of the following:

31       (a) The sale of an investment or an opportunity for an investment that  
32 is not registered with any state or federal authority.

33       (b) A prize promotion or premium.

34       (c) A recovery service.

35       5. A person or solicitor for a person who operates a retail business  
36 establishment under the same name as the name used in the solicitation of  
37 sales by telephone, if on a continuing basis all of the following apply:

38       (a) Merchandise is displayed and offered for sale or services are  
39 offered for sale and provided at the person's business establishment.

40       (b) At least fifty per cent of the person's business involves the  
41 buyer obtaining the merchandise at the person's business establishment.

42       (c) The person holds a transaction privilege tax license pursuant to  
43 title 42, chapter 5.

44       6. A person or solicitor for a person soliciting another business if  
45 all of the following occur:

1 (a) At least fifty per cent of the person's dollar volume consists of  
2 repeat sales to existing businesses.

3 (b) The person does not conduct a prize promotion that requires or  
4 implies that to win a consumer must pay money or purchase merchandise.

5 (c) Neither the person nor any of the person's principals has within  
6 twenty years been convicted in any state of a felony or crime of moral  
7 turpitude, breach of trust, fraud, theft, dishonesty or violation of  
8 telephone solicitation laws, been subject to a final judgment in a civil  
9 action involving fraud, deceit or misrepresentation or been subject to an  
10 administrative order involving fraud, deceit, misrepresentation or any  
11 violation of telephone solicitations laws of any agency of this state,  
12 another state, the federal government, a territory of the United States or  
13 another country.

14 7. A person or solicitor on behalf of a person who solicits sales by  
15 periodically publishing and delivering a catalog to consumers if all of the  
16 following apply:

17 (a) The catalog contains a written description or illustration of each  
18 item offered for sale and the price of each item offered for sale.

19 (b) The catalog includes the business address or home office address  
20 of the person.

21 (c) The catalog includes at least twenty-four pages of written  
22 material and illustrations.

23 (d) The catalog is distributed in more than one state and has an  
24 annual circulation by mail of at least two hundred fifty thousand.

25 B. The following sellers shall file a limited registration statement  
26 pursuant to section 44-1272.01 and, except for section SECTIONS 44-1278 AND  
27 44-1282, are exempt from this article:

28 1. A person acting within the scope of a license issued under title  
29 6 or 32 or by the corporation commission pursuant to this title, except  
30 persons licensed under title 6, chapter 13.

31 2. If soliciting within the scope of the license, any licensed  
32 securities, commodities or investments broker or dealer or investment advisor  
33 or any licensed associated person of a securities, commodities or investments  
34 broker or dealer or investment advisor.

35 3. An issuer or a subsidiary of an issuer that has a class of  
36 securities that is subject to section 12 of the securities exchange act of  
37 1934 (15 United States Code sections 78a through 78mm) and that is either  
38 registered or exempt from registration under paragraph (A), (B), (C), (E),  
39 (F), (G) or (H) or subsection (g) (2) of section 12 of the act. A subsidiary  
40 of an issuer that qualifies for exemption under this paragraph is not exempt  
41 unless at least sixty per cent of the voting power of the subsidiary's shares  
42 is owned by the qualifying issuer or issuers.

43 4. A person certificated or regulated by the corporation commission  
44 pursuant to title 40, chapter 2 or a subsidiary of that person or a federal

1 communications commission licensed cellular telephone company or radio  
2 telecommunication services provider.

3 5. A person making telephone solicitations for a newspaper of general  
4 circulation, a magazine or a licensed or franchised cable television system.

5 6. An issuer or subsidiary of an issuer that is subject to  
6 registration under chapter 12, article 6 or 7 of this title or that is exempt  
7 from registration under section 44-1843, subsection A, paragraph 1, 2, 3, 4,  
8 5, 7 or 9.

9 7. A person making telephone solicitations for the sale or purchase  
10 of books, recordings, videocassettes and similar goods through a membership  
11 group or club regulated by the federal trade commission or through a  
12 contractual plan or arrangement such as a continuity plan, subscription  
13 arrangement, series arrangement or single purchase under which the seller  
14 ships goods to a consumer who has consented in advance to receive those goods  
15 and the recipient is given the opportunity to review goods for at least seven  
16 days and to receive a full refund for return of undamaged goods.

17 8. A person or solicitor for a person when soliciting previous  
18 customers, if all of the following apply:

19 (a) The person is not offering to sell or selling a security that is  
20 not registered with any state or federal authority.

21 (b) The person makes the solicitation under the same name as the name  
22 used to sell merchandise to the customer previously.

23 (c) The person does not operate a recovery service.

24 (d) The person does not conduct a prize promotion that requires a  
25 consumer to, or implies that to win a consumer must, pay money or purchase  
26 merchandise.

27 (e) The person has not, or any of its principals have not, within  
28 twenty years been convicted in any state of a felony or a crime of moral  
29 turpitude, breach of trust, fraud, theft, dishonesty or a violation of  
30 telephone solicitation laws, been subject to a final judgment in a civil  
31 action involving fraud, deceit or misrepresentation or been subject to an  
32 administrative order involving fraud, deceit, misrepresentation or any  
33 violation of telephone solicitation laws of any agency of this state, another  
34 state, the federal government, a territory of the United States or another  
35 country.

36 9. A person making telephone solicitations exclusively for the purpose  
37 of the sale of telephone answering services to be provided by that person or  
38 that person's employer.

39 10. Any bank holding company, bank, financial institution, trust  
40 company, savings and loan association, credit union, mortgage banker or  
41 broker, consumer lender or insurer that is licensed or supervised by an  
42 official or agency of this state, any other state or the United States,  
43 including any parent, subsidiary or affiliate of these institutions.

1        11. A person providing telemarketing sales service continuously for at  
2 least five years under the same ownership and control that derives  
3 seventy-five per cent of its gross telemarketing sales revenues from  
4 contracts with persons exempted by this section. A seller using an exempt  
5 telemarketing sales service is not exempt unless otherwise qualifying for an  
6 exemption under this section.

7        C. On request by the secretary of state, the director of the  
8 department of insurance shall provide a current list in a mutually acceptable  
9 electronic format to the secretary of state of the requested licensees  
10 described in subsection A, paragraph 1 of this section that includes all of  
11 the following information:

12        1. The true legal name of the seller.

13        2. All of the names under which the seller is doing business or  
14 intends to do business.

15        3. The complete street address of the physical location of the  
16 principal place of business of the seller and the telephone number for the  
17 location.

18        4. The name and address of the seller's agent who is authorized to  
19 receive service of process in this state.

20        D. In any civil proceeding alleging a violation of this article, the  
21 burden of proving an exemption or an exception from a definition is on the  
22 person claiming the exemption or exception. In any criminal proceeding in  
23 which a violation of this article is alleged, the burden of producing  
24 evidence to support a defense based on an exemption or an exception from a  
25 definition is on the person claiming the exemption or exception.

26        E. Any person or solicitor exempted in part from this article by this  
27 section shall not make or submit a charge to a consumer's credit card account  
28 or a consumer's checking, savings, share or similar account unless any of the  
29 following apply:

30        1. The person provides that the consumer may receive a full refund for  
31 the return of undamaged and unused goods or a cancellation of services by  
32 providing notice to the person within seven days after the date that the  
33 consumer receives the merchandise and the person processes:

34        (a) A full refund within thirty days after the date that the person  
35 receives the returned merchandise from the consumer.

36        (b) A full refund within thirty days after the purchaser of services  
37 cancels an order for the services or a pro rata refund for any services not  
38 yet performed for the consumer.

39        2. The person provides the consumer with a signed copy of a written  
40 contract that includes the person's name, address and business telephone  
41 number and that fully describes the merchandise offered by the person, the  
42 total price to be charged by the person and any terms or conditions affecting  
43 the sale.

1        3. The person is an organization that is registered with the secretary  
2 of state pursuant to section 44-6552 or that is exempt from registration  
3 pursuant to section 44-6553.

4        Sec. 3. Section 44-1276, Arizona Revised Statutes, is amended to read:

5        44-1276. Required disclosures; payment for goods;  
6                    identification of seller or solicitor; cancellation  
7                    of telephone solicitation sale; notice of right to  
8                    cancel

9        A. Before beginning the solicitation or sales presentation over the  
10 telephone, the SELLER OR solicitor shall disclose to the consumer:

11        1. The complete street address of the physical location from which the  
12 SELLER OR solicitor is making the telephone solicitation and the complete  
13 street address of the seller's principal location.

14        2. The legal name of the seller on whose behalf the solicitor is  
15 making the solicitation.

16        3. The solicitor's true legal name.

17        4. That the purpose of the call is to sell merchandise.

18        B. During any solicitation or sales presentation made by the A SELLER  
19 OR solicitor and in any written correspondence provided to the consumer as  
20 part of the solicitation, the SELLER OR solicitor shall clearly and  
21 conspicuously disclose to the consumer:

22        1. Any charge, including the amount for the use of any premium being  
23 offered.

24        2. Any material restriction, requirement, condition, limitation or  
25 exception that is associated with the use of the premium.

26        3. Any charge connected with the sale of merchandise.

27        4. The time period within which any premium will be delivered.

28        5. The consumer's right to cancel the transaction pursuant to  
29 subsection C.

30        C. In addition to any right to otherwise revoke an offer, the consumer  
31 may cancel a telephone solicitation sale up to midnight of the third business  
32 day after the receipt of the merchandise or premium, whichever is later.

33        D. No telephone solicitation sale is effective unless the consumer is  
34 both:

35        1. Advised orally and in writing of the legal name, telephone number  
36 and complete street address of the physical location of the seller.

37        2. Advised orally of the right of cancellation along with a written  
38 notice containing the following information:

39                    Notice of Cancellation

40        1. You may cancel this order without any penalty or  
41 obligation within three business days from the delivery of the  
42 merchandise or premium (gift, bonus, prize or award), whichever  
43 is later.



2. If you cancel, any payments made by you will be returned within ten days after the receipt by the seller of your notice of cancellation.

3. To cancel this transaction, mail or deliver a signed and dated copy of your cancellation notice or send a telegram to

\_\_\_\_\_ at \_\_\_\_\_  
(Name of seller) (Address of seller's place of business)

4. If you cancel, any merchandise or premium delivered to you must be returned at our expense to \_\_\_\_\_

(Name of seller)

at \_\_\_\_\_  
(Address of seller's place of business)

no later than twenty-one business days after the receipt of this merchandise or premium, whichever is later.

E. The notice of cancellation given by the consumer is effective if it indicates the intention on the part of the consumer not to be bound by the telephone solicitation sale.

F. A provision of a contract, offer or agreement that waives a consumer's right of cancellation under this section is void and has no effect.

G. For the purposes of this section, "business day" does not include Sunday or a federal or state holiday.

Sec. 4. Title 44, chapter 9, article 6, Arizona Revised Statutes, is amended by adding section 44-1282, to read:

44-1282. Intrastate telemarketing; prohibitions; enforcement; definition

A. A SELLER OR SOLICITOR OR ANYONE ACTING ON BEHALF OF A SELLER OR SOLICITOR SHALL NOT INITIATE AN INTRASTATE TELEPHONE SOLICITATION TO A TELEPHONE NUMBER IN THIS STATE IF THE TELEPHONE NUMBER IS ENTERED IN THE NATIONAL DO-NOT-CALL REGISTRY ESTABLISHED BY THE FEDERAL TRADE COMMISSION PURSUANT TO THE DO-NOT-CALL IMPLEMENTATION ACT, EXCEPT THAT THIS SECTION DOES NOT APPLY TO ANY INTRASTATE TELEPHONE SOLICITATION THAT WOULD BE AUTHORIZED OR PERMITTED BY FEDERAL LAW OR REGULATION RELATING TO AN INTERSTATE TELEPHONE SOLICITATION OR TO CALLS MADE BY OR ON BEHALF OF A SELLER OR SOLICITOR WHO IS LICENSED PURSUANT TO TITLE 32, CHAPTER 20 IF THE CALLS ARE MADE UNDER ANY OF THE FOLLOWING CIRCUMSTANCES:

1. IN REGARD TO A PAST OR PRESENT EMPLOYMENT AGREEMENT WITH THE CONSUMER PURSUANT TO TITLE 32, CHAPTER 20, ARTICLE 3 AND WHO IS CALLING IN REGARD TO A SUBJECT REASONABLY RELATED TO THE EMPLOYMENT AGREEMENT.

2. IN RESPONSE TO A REFERRAL FROM A NATURAL PERSON WITH WHOM THE CONSUMER HAS A PERSONAL RELATIONSHIP.

3. IN RESPONSE TO AN EXPRESS REQUEST OR PERMISSION OF A CONSUMER WHOSE TELEPHONE NUMBER IS ENTERED IN THE NATIONAL DO-NOT-CALL REGISTRY.

B. IF A SELLER OR SOLICITOR OR PERSON ACTING ON BEHALF OF A SELLER OR SOLICITOR IS AUTHORIZED OR PERMITTED TO PERFORM ANY ACTION OR CONDUCT ANY

1 PRACTICE UNDER THE DO-NOT-CALL IMPLEMENTATION ACT WITH RESPECT TO INTERSTATE  
2 TELEPHONE SOLICITATIONS, THE SELLER, SOLICITOR OR PERSON MAY PERFORM THE  
3 ACTION OR CONDUCT THE PRACTICE WITH RESPECT TO INTRASTATE TELEPHONE  
4 SOLICITATIONS TO TELEPHONE NUMBERS IN THIS STATE.

5 C. A VIOLATION OF THIS SECTION IS AN UNLAWFUL PRACTICE PURSUANT TO  
6 SECTION 44-1522. THE ATTORNEY GENERAL MAY INVESTIGATE AND TAKE APPROPRIATE  
7 ACTION PURSUANT TO CHAPTER 10, ARTICLE 7 OF THIS TITLE, BUT A CIVIL PENALTY  
8 UNDER SECTION 44-1531 FOR A VIOLATION OF THIS SECTION SHALL NOT EXCEED ONE  
9 THOUSAND DOLLARS PER VIOLATION. THIS SUBSECTION IS IN ADDITION TO ALL OTHER  
10 CAUSES OF ACTION, REMEDIES AND PENALTIES AVAILABLE TO THIS STATE. ALL MONIES  
11 COLLECTED AS FINES AND CIVIL PENALTIES PURSUANT TO THIS SUBSECTION SHALL BE  
12 CREDITED TO THE STATE GENERAL FUND.

13 D. FOR THE PURPOSES OF THIS SECTION, "DO-NOT-CALL IMPLEMENTATION ACT"  
14 MEANS THE DO-NOT-CALL IMPLEMENTATION ACT (P.L. 108-10; 117 STAT. 557) AS  
15 ENACTED ON MARCH 11, 2003 AND FEDERAL REGULATIONS ADOPTED TO IMPLEMENT THAT  
16 ACT.

APPROVED BY THE GOVERNOR MAY 19, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 20, 2003.

Passed the House April 16, 20 03,

by the following vote: 55 Ayes,

1 Nays, 4 Not Voting

Jake Flake  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate March 20, 20 03,

by the following vote: 25 Ayes,

0 Nays, 5 Not Voting

Ken Blunt  
President of the Senate

Charmine Billington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

       day of       , 20  ,

at        o'clock        M.

        
Secretary to the Governor

Approved this        day of

      , 20  ,

at        o'clock        M.

        
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this        day of       , 20  ,

at        o'clock        M.

        
Secretary of State

S.B. 1119

HOUSE FINAL PASSAGE  
as per Joint Conference

Passed the House May 13, 20 03,

by the following vote: 53 Ayes,

5 Nays, 2 Not Voting

Jake Flake  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

SENATE FINAL PASSAGE  
as per Joint Conference

Passed the Senate May 12, 20 03,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

Klu Bennett  
President of the Senate

Charmine Belletier  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor

this 13 day of May, 20 03

at 3:26 o'clock P M.

Sandra Ramirez  
Secretary to the Governor

Approved this 19 day of

May, 20 03,

at 4:30 o'clock P M.

J. N. R. K.  
Governor of Arizona

S.B. 1119

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 20 day of May, 20 03,

at 10:53 o'clock A M.

Janice K. Brewer  
Secretary of State